BOOKS AND PERIODICALS.

I. LEADING LEGAL ARTICLES.

CONSTITUTIONAL LIMITS OF THE CONTROL BY THE STATE OVER MUNICIPAL CORPORATIONS. — The power of the legislature to alter or abolish a municipal corporation, and the effect of such alteration and abolition on the liabilities of the corporation and the rights of third parties are the occasion for an interesting article in the Virginia Law Register. *The Rights of Creditors of a Municipal Corporation when the State has Passed a Law to Abolish or Alter It*, by Richard W. Flournoy, Jr., 12 Va. L. Reg. 175 (July, 1906). The subject is treated under three heads: 1. where one or more new corporations are created in place of the old; 2. where a municipal corporation is abolished by act of the legislature, and its territory and inhabitants remanded to the government of the state, no adequate provision being made for the payment of creditors of the defunct municipality; 3. where the original municipality remains in existence, but a part of its territory and population is taken away and formed into a new municipal corporation. In regard to the first proposition the writer holds the view that the new corporation will be liable for the debts of the old in proportion to the amount of property taken over. This opinion seems well established by authority. See *Mount Pleasant* v. *Beckwith*, 100 U. S. 514; *Mobile* v. *Watson*, 116 U. S. 289. The doctrine must be supported on broad grounds of public policy and equity rather than on any technical rules. Under the third head the writer's view that where the original municipality is shorn of a part of its territory, the old and the new corporations should bear the burden of indebtedness proportionately to the amount of territory and population taken away and retained, seems in accord with the same sound views. The law, as is admitted, appears to be the other way, but has apparently not been tested in an extreme case.

In regard to the second proposition it is maintained that the law is apparently "that a state legislature cannot, under the constitution, abolish a municipal corporation without either making adequate provision for the payment of its debts, or else creating another municipality in its place." The argument against such legislative action is that it violates the provision of the federal constitution that no state shall pass any law impairing the obligation of contracts. This would be so if abolishing the municipal charter abolished the debt, but it has been distinctly held that this is not so. The debt remains in force, and if later the old municipality is reincorporated or embodied within the limits of one already existing, the creditor may sue such new municipality and the time elapsing during the interval cannot be used against him as a defense under the Statute of Limitations. See *Broadfoot* v. *City of Fayetteville*, 32 S. E. Rep. 804, 808 (Tenn.). The writer accepts the proposition that if a new corporation is later created, the creditor may sue that; but it is hard to see, if the law abolishing the old corporation was unconstitutional, how a later act re-establishing the municipality cures the defect in the first. The second act presupposes the constitutionality of the first. Many of the cases which the author cites do not support his proposition. For instance, the case of Wolff *v.* New Orleans (103 U. S. 358) is not a case where the state attempted to abolish a city charter at all, but where, without doing so, it attempted to curtail the taxing power of the city, whereby the security of the bondholders was diminished.

As has been intimated, the doctrine worked out by the writer is not necessary to protect the rights of the creditor, for a reincorporation will usually take place. Even if no new corporation were formed, the aid of equity might be invoked to form a taxing district within the limits of the old. A recent case allowed *mandamus* proceedings after the abolition of a township to compel the auditor and treasurer of the county to collect the taxes for the benefit of the creditors. See *Graham* v. *Folsom*, 200 U. S. 248. With these safeguards for the rights

of the creditor, it seems hardly advisable to put the sharp limitation which is advocated on the control of the legislature over the municipal corporation which it has created.

THE METAPHYSICAL NATURE OF A CORPORATION IN THE EYE OF THE LAW. — From the point of view of the man in the street a corporation is obviously a fiction. But this does not settle whether it is a fiction or a reality in the eye of the law. In a recent English article Mr. E. Hilton Young has given an interesting discussion of the question, in which he contends that while in theory a corporation exists only in the contemplation of the law which creates it, in practice it has become a real legal being apart therefrom. *The Legal Personality of a Foreign Corporation*, 22 L. Quar. Rev. 178 (April, 1906). His argument is, in brief, that a foreign corporation in theory does not exist outside of the sovereignty which creates it. Yet the courts of other sovereignties permit it to sue as plaintiff, and obtain personal jurisdiction of it as defendant. A court cannot obtain personal jurisdiction of that which in the eye of the law does not exist. Consequently, whatever the theory may be, for practical purposes a foreign corporation is a real legal being.

While the American authorities are in confusion, the general result seems to be a similar conflict between theory and practice. Indeed the seeds of it are found in Chief Justice Marshall's definition of a corporation as "an artificial being . . . existing only in contemplation of law." See *Dartmouth College* v. *Woodward*, 4 Wheat. (U. S.) 518, 636. This definition has been approved by the weight of American authority. But metaphysically it seems to involve a contradiction. A being *ex hypothesi* exists. A "being" which at the same time exists and does not exist is certainly a peculiar metaphysical concept. Yet this is precisely the result reached by the cases. In theory a corporation in the jurisdiction which creates it is essentially a legal entity, apart from the individual stockholders composing it. The word "person" in a statute has been held sufficiently to describe it. See *People* v. *Utica Ins. Co.*, 15 Johns. (N. Y.) 358. For purposes of federal jurisdiction it has been held to be a "citizen" of the state which creates it. See *Nashua & Lowell R. R. Corp.* v. *Boston & Lowell R. R. Corp.*, 136 U. S. 356. And yet courts of equity may rarely, where justice requires it, look behind the legal entity to the individual stockholders. See *Moore & Handley Hardware Co.* v. *Tower Hardware Co.*, 87 Ala. 206. A corporation, then, is generally regarded as existing in the state which creates it.

But it is equally well settled that since a corporation exists only in contemplation of the law it has no legal existence outside the state where that law operates. See *Augusta Bank* v. *Earle*, 13 Pet. (U. S.) 519, 588. Nevertheless, under the proper circumstances it may contract in another state by means of agents, and the courts thereof may by comity treat it as existent and permit it to sue on the contract. See *Augusta Bank* v. *Earle*, *supra*. But a foreign corporation may equally commit a tort or a nuisance. See *Austin* v. *N. Y. & E. R. R.*, 25 N. J. Law 381; *Seattle Gas & Electric Co.* v. *Citizens L. & P. Co.*, 123 Fed. Rep. 588. Comity, however, cannot give jurisdiction of a non-existent corporation when those aggrieved desire to serve it. Consequently, in the absence of statute, it is impossible to bring action *in personam* against a foreign corporation. See *Middlebrooks* v. *Springfield Ins. Co.*, 14 Conn. 301. In the absence of statute, therefore, it can act, but cannot be brought to account. But a corporation, though a "citizen" of its own state for purposes of jurisdiction, is not a "citizen" within the meaning of article 4, § 2 of the United States Constitution, which declares that "the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states." See *Ducat* v. *City of Chicago*, 48 Ill. 172. Consequently a state may lay down the conditions under which a foreign corporation may do business therein. See *Paul* v. *Virginia*, 8 Wall. (U. S.) 168. Most of our states have therefore passed statutes compelling foreign corporations which do business within the state to